

US EPA ARCHIVE DOCUMENT

and appropriated to the Commissioner for the payment of the expense of examinations, licensing, investigations, the providing of forms, and other related expenses necessitated by this act. All payments out of said fund shall be made by the State Treasurer on warrants issued against claims approved by the Insurance Commissioner and submitted to the Director of State Finance for audit and payment. These funds are in addition to other appropriations made to the Office of Insurance Commissioner.

B. Any funds payable to the court clerk or other officer pursuant to this act, by any licensed bondsman, managing general agent, surety company or professional bondsman shall be issued a receipt in the name of the surety company or professional bondsman, as the case may be, and when such funds are refunded or otherwise disbursed, they shall be made payable to such surety company or professional bondsman, as the case may be.

SECTION 10. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Approved May 10, 1990.

PUBLIC HEALTH AND SAFETY—VIOLATION OF ENVIRONMENTAL STANDARDS—CONTROLLED INDUSTRIAL WASTE MANAGEMENT

CHAPTER 196

H.B. No. 1933

AN ACT RELATING TO PUBLIC HEALTH AND SAFETY; AMENDING SECTION 2, CHAPTER 148, O.S.L.1986 (63 O.S.SUPP.1989, SECTION 1-1701.1A), WHICH RELATES TO VIOLATION OF ENVIRONMENTAL STANDARDS; MODIFYING CERTAIN TIME PERIOD CONCERNING CERTAIN FINAL ORDERS; AUTHORIZING ADMINISTRATIVE WARRANTS; PROVIDING PURPOSE; AMENDING SECTION 2, CHAPTER 180, O.S.L.1986, AS AMENDED BY SECTION 1, CHAPTER 42, O.S.L.1988, 63 O.S. 1981, SECTION 1-2005, AS AMENDED BY SECTION 1, CHAPTER 248, O.S.L.1982, 1-2008, AS AMENDED BY SECTION 1, CHAPTER 140, O.S.L.1986, 1-2009.1 AND SECTION 3, CHAPTER 113, O.S.L.1985, AS AMENDED BY SECTION 5, CHAPTER 180, O.S.L.1986 (63 O.S.SUPP.1989, SECTIONS 1-2004.2, 1-2005, 1-2008 AND 1-2012.1), WHICH RELATE TO THE OKLAHOMA CONTROLLED INDUSTRIAL WASTE DISPOSAL ACT; PROVIDING FOR REGULATION OF USED OIL AND CONTROLLED INDUSTRIAL WASTE COMPONENTS OF CERTAIN MIXED WASTES; AUTHORIZING CERTAIN ALTERNATE FINANCIAL ASSURANCES; MODIFYING POWERS AND DUTIES OF THE STATE BOARD OF HEALTH; MODIFYING TIME PERIOD CONCERNING CERTAIN FINAL ORDERS; PROVIDING FOR JURISDICTION OF SPECIFIED ACTS; PROVIDING FOR JURISDICTION OF SPECIFIED ACTS; PROVIDING FOR ASSESSMENT OF CERTAIN FEES; SPECIFYING FEES; PROVIDING CERTAIN EXEMPTIONS; PROVIDING FOR DETERMINATION; PROVIDING PROCEDURES; AUTHORIZING CERTAIN ADJUSTMENTS; SPECIFYING PURPOSES; PROVIDING FOR EXCLUSIVE JURISDICTION OF CERTAIN DISCHARGE PERMITS; PROVIDING FOR CODIFICATION; PROVIDING AN OPERATIVE DATE; AND DECLARING AN EMERGENCY.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

Additions in text are indicated by underline; deletions by ~~strikeouts~~

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Ch. 196 LAWS FORTY-SECOND LEGISLATURE

SECTION 1. AMENDATORY Section 2, Chapter 148, O.S.L.1986 (63 O.S.Supp.1989, Section 1-1701.1A), is amended to read as follows:

Section 1-1701.1A A. In addition to any other remedies provided for by law, the Department, pursuant to rules and regulations, may issue a written order to any person whom the Department has reason to believe is presently in violation of any standards or rules ~~adopted~~ promulgated by the State Board of Health pursuant to environmental health laws, and to whom the Department has served, no less than fifteen (15) days previously, a written notice of violation of such standards or rules. The fifteen-day notice period may be reduced as, in the opinion of the Department, may be necessary to render the order reasonably effectual.

B. The written order may require compliance with such standards or rules immediately or within a specified time period or both. The order may also assess an administrative fine for each day or part of a day that such person fails to comply with the order.

C. Any order issued pursuant to this section shall state with specificity the nature of the violation. Any penalty assessed in the order shall not exceed Ten Thousand Dollars (\$10,000.00) per day of noncompliance with the order. In assessing such a penalty, the Department shall consider the seriousness of the violation and any efforts to comply with applicable requirements.

D. Any order issued pursuant to the provisions of this section shall become a final order unless, no later than ~~thirty (30)~~ fifteen (15) days after the order is served, the person or persons named therein request an administrative hearing. Upon such request the Department shall promptly conduct the hearing. The Department shall dismiss such proceedings where compliance with the order is demonstrated. A final order following a hearing may assess an administrative fine of an amount based upon consideration of the evidence but not exceeding the amount stated in the written order.

E. Such orders and hearings are subject to the Oklahoma Administrative Procedures Act.

F. The environmental health laws to which the provisions of this section shall be applicable include those laws codified in Articles 9 through 16, inclusive, and Articles 17-A, 18, 20 and 21 of Title 63, and further include the Oklahoma Solid Waste Management Act and those professions and occupations codified in Title 59 of the Oklahoma Statutes for which the Department issues a license.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1701.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

The Department may apply to and obtain from a judge of the district court, an administrative warrant as necessary to enforce access to premises for investigation, inquiry and inspection under the provisions of the Public Health Code and the rules and regulations promulgated by the State Board of Health.

SECTION 3. AMENDATORY Section 2, Chapter 180, O.S.L.1986, as amended by Section 1, Chapter 42, O.S.L.1988 (63 O.S.Supp.1989, Section 1-2004.2), is amended to read as follows:

Section 1-2004.2 In addition to other powers and duties specified by law, the Board shall adopt rules and regulations to:

1. Prohibit the placement of any liquid which is not a controlled industrial waste in a landfill for which a permit is required or which is operating under interim status authorized pursuant to Section 1-2009.1 of Title 63 of the Oklahoma Statutes;

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2. Prohibit or restrict the storage of controlled industrial waste for which land disposal is prohibited, except to the extent that such storage is solely for the purpose of accumulation of such quantities of controlled industrial wastes as are necessary to facilitate proper recovery, treatment, or disposal;

3. Prohibit or restrict the use of waste or used oil or other material used for dust suppression or road treatment, which is contaminated or mixed with dioxin or any other waste identified or listed by rules and regulations of the Board as a controlled industrial waste except a waste identified solely on the basis of ignitability;

4. Require such monitoring and control of air emissions at controlled industrial waste treatment, storage, and disposal facilities, including but not limited to open tanks, surface impoundments, and landfills, as may be necessary to protect human health and the environment;

5. Regulate the production, burning, distribution, and marketing of fuel containing controlled industrial waste or used oil as may be necessary to protect human health and the environment including, but not limited to, labeling and recordkeeping requirements;

6. Control the listed or identified controlled industrial wastes which discharge through a sewer system to a publicly owned treatment works for the protection of human health and the environment;

7. Provide in accordance with Sections 3005(c) and 3005(e) of the Resource Conservation and Recovery Act for the automatic termination of interim status for controlled industrial waste units failing to comply with applicable requirements for the submission of part B permit applications and certification of groundwater monitoring and financial responsibility compliance;

8. Require from applicants for and owners and operators of controlled industrial waste facilities evidence of financial responsibility for corrective action as may be required or ordered under the authority of the Oklahoma Controlled Industrial Waste Disposal Act;

9. Require that generators of controlled industrial waste establish and implement programs to reduce the volume or quantity and toxicity of such waste to the extent economically practicable; and

10. Specify levels or methods of treatment which substantially diminish the toxicity of the waste or likelihood of its migration so as to minimize threats to human health and the environment.

SECTION 4. AMENDATORY 63 O.S. 1981, Section 1-2005, as amended by Section 1, Chapter 248, O.S.L.1982 (63 O.S.Supp.1989, Section 1-2005), is amended to read as follows:

Section 1-2005. A. The Department shall prepare rules, regulations and minimum standards for the listing and characterization of controlled industrial waste, for the treatment, disposal, transportation, storage and recycling of controlled industrial waste and recyclable materials in Oklahoma with the exception of the following:

1. ~~Radioactive~~ The controlled industrial waste component of mixed controlled industrial waste and radioactive waste shall continue to be regulated by the Occupational and Radiological Health Service of the Environmental Health Services Branch of the State Department of Health as controlled industrial waste. The radioactive waste component shall be regulated as radioactive waste. Both the controlled industrial waste requirements and the radioactive waste requirements shall apply if physical separation of the two components is not accomplished;

2. The Corporation Commission of Oklahoma is hereby vested with exclusive jurisdiction, power and authority, and it shall be its duty to make and

enforce such rules, regulations and orders governing and regulating the handling, hauling, storage and disposition of salt water, mineral brines, waste oil and other deleterious substances produced from or obtained or used in connection with the drilling, development, producing and processing of oil and gas, including reclaiming of oil from tank bottoms located on leases and tank farms located outside the boundaries of a refinery.

The Corporation Commission shall promulgate such rules and regulations as are reasonable and necessary for the purpose of preventing the pollution of the surface and subsurface waters in the state. The Oklahoma Corporation Commission shall, in no instance, issue a grant of operating authority to transport salt water or deleterious substances to any applicant for such authority who cannot furnish written proof of access to a disposal well or wells within reasonable hauling distance of the territory proposed to be served. Said written proof of access shall be provided by the owner of the disposal well and said disposal well must first be approved by the Corporation Commission as adequate to meet the need for proper disposal of all salt water and deleterious substances which the applicant may reasonably be expected to transport as a common carrier. Provided that nothing herein shall be construed as prohibiting the disposition of salt water in a disposal well that is owned by a person other than the licensee.

Provided further, on or before December 31, 1982, existing carriers holding such operating authority shall furnish written proof of access to an approved disposal well within reasonable hauling distance. Failure to comply may, at the discretion of the Commission, result in suspension of carrier's operating authority.

The proven violation of Oklahoma Corporation Commission salt water and deleterious substance disposal rules and regulations by a carrier in any calendar year shall, in the first instance, result in a carrier being warned by the Commission and fined up to Two Thousand Five Hundred Dollars (\$2,500.00). A second proven violation in any calendar year shall result in a carrier being placed on probation and fined up to Five Thousand Dollars (\$5,000.00) by the Commission. A third proven violation in any calendar year shall result in a fine of up to Ten Thousand Dollars (\$10,000.00), and at the discretion of the Commission, suspension of the carrier's operating authority for a period of up to thirty (30) days. The driver of a truck, who is not the owner of the vehicle used in violation of this section or any of the rules and regulations of the Corporation Commission, shall be adjudicated a codefendant and subject to a fine equal to ten percent (10%) of the fine assessed to the owner of such vehicle, up to Five Hundred Dollars (\$500.00);

3. The State Department of Agriculture is hereby vested with the exclusive jurisdiction, power and authority to make and enforce such rules, regulations and orders concerning those materials excluded by the U.S. Environmental Protection Agency pursuant to the small farmer exclusion, as it exists or may be amended; and

4. Rules and regulations pertaining to standards for the transportation of controlled industrial waste and recyclable materials shall not be more stringent than those of the U.S. Department of Transportation.

B. Before recommending such rules, regulations and standards, as set out in subsection A of this section, the Department shall consult with interested state and local governmental bodies and with federal regulatory agencies. At least one public hearing shall be held on the proposed rules, regulations and standards.

C. The present rules and regulations of the State Department of Health and the Oklahoma Water Resources Board shall remain effective until the

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adoption of new rules and regulations by the State Board of Health. Insofar as permitted by law, the rules and regulations promulgated by the Board shall be in reasonable accord with the hazardous waste regulations of the U.S. Environmental Protection Agency pursuant to the Resource Conservation and Recovery Act. Such rules and regulations may incorporate by reference the hazardous waste regulations of the U.S. Environmental Protection Agency.

D. The provisions of this act shall be cumulative to the minimum requirements established by the Administrative Procedures Act.

SECTION 5. AMENDATORY 63 O.S. 1981, Section 1-2008, as amended by Section 1, Chapter 140, O.S.L.1986 (63 O.S.Supp.1989, Section 1-2008), is amended to read as follows:

Section 1-2008. A. The Department shall issue permits for the operation of controlled industrial waste facilities. No operation permit shall be issued except upon proper application, proof of sufficient liability insurance and financial responsibility, informal public meeting, if requested, and such other requirements as hereinafter provided.

B. Liability insurance shall be provided by the applicant and shall apply to sudden and nonsudden bodily injury or property damage on, below or above the surface, as required by the rules and regulations of the Board. Additional insurance shall be required as deemed necessary by the Department to protect the property rights of owners or leaseholders of underground resources such as oil, gas, water or other mineral substances. Such insurance shall be maintained for the period of operation of the facility and shall provide coverage for damages resulting from operation of the facility during operation and after closing. In lieu of liability insurance required by this or any other section of this act, an equivalent amount of cash, ~~or securities or~~ alternate financial assurance of a type and in an amount acceptable to the Department, may be substituted; provided, that such deposit shall be maintained for a period of five (5) years after the date of last operation of the facility.

C. Prior to the issuance of any permit, the applicant shall post a bond or acceptable alternate financial assurance guaranteeing proper closure and guaranteeing the performance of the maintenance and monitoring functions set out in Section 1-2009 of this title.

D. The Department shall require additional insurance and security by the permittee upon an application for expansion of the facility. Such increase in insurance and security shall be in a sufficient amount to provide adequate coverage for damages resulting from such expansion during operation of the facility and after closing.

E. Prior to the issuance of any permit, the applicant shall, upon request of the Department, produce evidence of the applicant's financial status indicating that the applicant is financially able to operate and maintain a controlled industrial waste facility as required by this act. If the applicant is not financially able to operate and maintain a controlled industrial waste facility, as required by this act, a permit shall be denied.

F. The operation of a controlled industrial waste facility shall be under the supervision of a person meeting qualifications set by the Board appropriate to the type of facility.

G. The Department is authorized and shall require the construction of monitoring wells, pond liners, fencing, signs or other equipment deemed necessary by the Department to ensure the suitable operation of the facility.

H. 1. In any case where the owner or operator of a controlled industrial waste facility is in bankruptcy, reorganization, or arrangement pursuant to

the Federal Bankruptcy Code or if jurisdiction in any state court or any federal court cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct of which evidence of financial responsibility is required pursuant to the Oklahoma Controlled Industrial Waste Disposal Act may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action taken pursuant to this section, such guarantor shall be entitled to claim all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if any action had been brought against the guarantor by the owner or operator.

2. The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator pursuant to the Oklahoma Controlled Industrial Waste Disposal Act. Nothing in this subsection shall be construed to limit any other state or federal statutory, contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of a such guarantor for bad faith either in negotiating or failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed to diminish the liability of any person under the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 or other applicable law.

3. As used in this section, the term "guarantor" means any person other than the owner or operator, who provides evidence of financial responsibility for an owner or operator pursuant to the Oklahoma Controlled Industrial Waste Disposal Act.

SECTION 6. AMENDATORY 63 O.S. 1981, Section 1-2009.1, is amended to read as follows:

Section 1-2009.1 ~~No~~ A. Except as otherwise provided by subsection B of this section or any rules of the State Board of Health with respect to short-term storage, no person shall store, treat or dispose of controlled industrial waste or store recyclable materials or commence construction of or own or operate any premises or facility engaged in the operation of storing, treating or disposing of controlled industrial waste or storing recyclable materials, who does not possess a valid and appropriate controlled industrial waste facility permit. ~~Provided that any~~

B. 1. Any person who owned or operated a controlled industrial waste facility which was operating or under construction on November 19, 1980, and who has submitted notice and permit application to the U.S. Environmental Protection Agency or to the Department, and whose facility complies with the rules of the Board, may continue operation until such time as the permit application is determined.

2. The State Board of Health may by rule provide for continued operation on an interim basis pending permit determination of a facility in existence on the effective date of any statutory or regulatory amendments that would subject the facility to a permit requirement pursuant to the Oklahoma Controlled Industrial Waste Disposal Act.

C. Facilities engaged only in recycling shall conduct operation of the facility in an environmentally acceptable manner and in accordance with the rules and regulations regarding the manifest, transportation and storage requirements, and generators in the event a controlled industrial waste is generated therefrom.

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SECTION 7. AMENDATORY Section 3, Chapter 113, O.S.L.1985, as amended by Section 5, Chapter 180, O.S.L.1986 (63 O.S.Supp.1989, Section 1-2012.1), is amended to read as follows:

Section 1-2012.1 In addition to any other remedies provided in the Oklahoma Controlled Industrial Waste Disposal Act, the Department, pursuant to rules and regulations, may issue a written order to any person whom the Department has reason to believe is presently in violation of any rule or rules adopted promulgated by the Board pursuant to the Oklahoma Controlled Industrial Waste Disposal Act and to whom the Department has served, no less than fifteen (15) days previously, a written notice of violation of such rule or rules.

1. Such order may require compliance with such rule or rules immediately or within a specified time period or both. Such order may also assess an administrative fine for each day or part of a day that such person fails to comply with such order.

- a. Any order issued pursuant to this section shall state with specificity the nature of the violation.
- b. Any penalty assessed in the order shall not exceed Ten Thousand Dollars (\$10,000.00) per day of noncompliance with the order. In assessing such a penalty, the Department shall consider the seriousness of the violation and any efforts to comply with applicable requirements.

2. Any order issued pursuant to this section shall become a final order unless, no later than ~~thirty (30)~~ fifteen (15) days after the order is served, the person or persons named therein request an administrative hearing. Upon such request the Department shall promptly conduct the hearing. The Department shall dismiss such proceedings where compliance with the order is demonstrated.

- a. Orders and hearings are subject to the ~~Oklahoma~~ Administrative Procedures Act.
- b. A final order following a hearing may assess an administrative fine of an amount based upon consideration of the evidence but not exceeding the amount stated in the written order.

3. Any order issued pursuant to this section may require that corrective action be taken beyond the controlled industrial waste facility boundary where necessary to protect human health and the environment, unless the owner or operator of the facility demonstrates that, despite the owner's or operator's best efforts, the owner or operator is unable to obtain the necessary permission to undertake such action.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-2001.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

Controlled industrial waste shall be treated and regulated pursuant to the provisions of the "Oklahoma Controlled Industrial Waste Disposal Act" and shall not be subject to the provisions of the "Oklahoma Solid Waste Management Act".

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-2005.3A of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Every controlled industrial waste treatment facility, storage facility, disposal facility, or facility which recycles controlled industrial waste subject to the provisions of the Oklahoma Controlled Industrial Waste Disposal Act

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shall pay an annual fee on controlled industrial waste to the Department of Health for deposit in the Public Health Special Fund.

1. Such fees shall be in the amounts stated in the following table:

LOCATION OF WASTE GENERATION

DISPOSITION OF WASTE	ON SITE	OFF SITE	OUT OF STATE
Waste Storage Only		\$2.00 per ton	\$3.00 per ton
Waste Recycling		\$4.00 per ton	\$6.00 per ton
Waste Treatment	\$4.00 per ton	\$8.00 per ton	\$12.00 per ton
Land Disposal	\$6.00 per ton	\$12.00 per ton	\$18.00 per ton
Underground Injection	\$0.01 per gallon	\$0.02 per gallon	\$0.03 per gallon

2. Any person or group of persons under common control owning an off-site controlled industrial waste treatment facility, storage facility, disposal facility, or facility which recycles controlled industrial waste shall pay a total fee of not less than Fifty Thousand Dollars (\$50,000.00) each state fiscal year.

3. The minimum fee requirement provided for in paragraph 2 of this subsection shall not apply to treatment facilities accepting controlled industrial waste exclusively for the purpose of conducting treatment research and design tests.

4. Any person or group of persons under common control owning a controlled industrial waste treatment facility, storage facility, disposal facility, or facility which recycles controlled industrial waste shall pay a total fee of not more than Five Hundred Thousand Dollars (\$500,000.00) in any one state fiscal year for all such facilities under common control of the ultimate parent of the group. Facilities are hereby authorized to charge the person contracting for the services of the facility their proportional share of the fees required by the provisions of this section.

5. The amounts of annual fees to be paid as specified in paragraph 1 of this subsection shall be based upon the weight or volume of waste received into a facility during the preceding state fiscal year as reported to the Department of Health. The facility shall become liable for payment of the fee on each ton or gallon of controlled industrial waste at the time it is received. The fee shall be payable by the facility to the Department of Health only as provided for in subsection C of this section.

6. The fee imposed by the provisions of this section shall be payable only once without regard to any subsequent handling and shall be based on the purpose for which the waste has been generated by or brought to the facility. In no event shall a facility be required to pay a fee on each step or process involved in the storage, treatment, or disposal of the waste at the facility or a related facility under common control.

- B. The following facilities shall not be required to pay the fee required by the provisions of this section:

1. Those facilities engaged only in the on-site storage of controlled industrial waste; and

2. Those facilities which have not generated or received new controlled industrial waste within the preceding state fiscal year.

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Additions in text are indicated by underline; deletions by ~~strikeouts~~.

C. Payment year for controlled industrial waste shall be the state fiscal year for which the annual fee is received. All fees shall be paid quarterly during the year received. All fees shall become due on the first day of the month following the fee period.

D. The fee shall be an annual fee based on the state fiscal year beginning on July 1 of the year.

E. The fee shall be a monitoring fee for the purpose of Title 63 of the Oklahoma Statutes, this section shall not apply to waste disposal facilities.

F. All fees shall be subject to the provisions of this section. The fee shall be pursuant to the following purposes:

1. The administrative costs of the Disposal Act.

2. The cost of the waste produced.

3. The cost of the information.

4. The cost of the waste in Oklahoma.

5. Increases in the cost of waste disposal.

SECTION 196.1
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The State shall not be liable for the cost of water discharge into surface water bodies necessary for the purpose of this section.

SECTION 196.2

SECTION 196.3
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C. Payment of the fees required by this section shall be due July 1 of each year for controlled industrial waste received by the facility during the prior state fiscal year. At the discretion of the facility, payment of the estimated annual fee owned by the facility may be made by quarterly payments. Such quarterly payments shall be due on the first day of the month of the following quarter during the state fiscal year in which the controlled industrial waste is received. All payments shall be made within thirty (30) days from the date it becomes due. In the event that at the end of the year an estimated fee paid is not the same as owed, the Department shall provide procedures for reconciling the fee paid with the fee owed.

D. The fees provided for in this section shall be adjusted proportionally on an annual basis to reflect changes in the Producers Price Index as certified to the State Department of Health by the Oklahoma Department of Commerce on July 1 of each year.

E. The fees provided for in this section shall be paid in lieu of the monitoring fees imposed in paragraph 2 of subsection A of Section 1-2005.2 of Title 63 of the Oklahoma Statutes. All facilities subject to the provisions of this section shall not be required to pay or collect any additional fees for waste disposal unless specifically provided for in the Oklahoma Controlled Industrial Waste Disposal Act.

F. All fees and other monies received by the Department pursuant to the provisions of this section shall be expended solely for the purposes specified in this section. The State Commissioner of Health shall expend monies received pursuant to the provisions of this section only for one or more of the following purposes:

1. The administration of the provisions of the Controlled Industrial Waste Disposal Act;
2. The development of an inventory of controlled industrial wastes currently produced in Oklahoma and management needs for the identified wastes;
3. The implementation of information exchange, technical assistance, public information, and educational programs;
4. The development and encouragement of waste reduction plans for Oklahoma waste generators; or
5. Increased inspection of controlled industrial waste facilities which may include full time inspectors at off-site controlled industrial waste facilities.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-2014.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

The State Department of Health is exclusively authorized to issue waste water discharge permits to controlled industrial waste facilities for discharge into surface waters of this state. The Department shall coordinate as necessary with appropriate federal agencies in issuing such permits.

SECTION 11.¹ Section 9 of this act shall become operative July 2, 1990.

SECTION 12. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Approved May 10, 1990.

1. 63 O.S.Supp.1990, § 1-1701.1A Note.

Ch. 296 LAWS FORTY-SECOND LEGISLATURE

PUBLIC HEALTH AND SAFETY—CONTROLLED INDUSTRIAL
WASTE—RECYCLING MATERIALS AND FACILITIES

CHAPTER 296

H.B. No. 2050

AN ACT RELATING TO PUBLIC HEALTH AND SAFETY; AMENDING 63 O.S. 1981, SECTIONS 1-2002, AS LAST AMENDED BY SECTION 1, CHAPTER 54, O.S.L.1988, 1-2004, AS AMENDED BY SECTION 1, CHAPTER 180, O.S.L. 1986, 1-2009.1, AS AMENDED BY SECTION 6 OF ENROLLED HOUSE BILL NO. 1933 OF THE 2ND SESSION OF THE OKLAHOMA LEGISLATURE AND 1-2010 (63 O.S.SUPP.1989, SECTIONS 1-2002 AND 1-2004), WHICH RELATE TO THE OKLAHOMA CONTROLLED INDUSTRIAL WASTE MANAGEMENT ACT; MODIFYING DEFINITIONS; INCLUDING RECYCLING MATERIALS WITHIN DEFINITION OF CONTROLLED INDUSTRIAL WASTE; MODIFYING POWERS AND DUTIES OF THE OKLAHOMA STATE DEPARTMENT OF HEALTH; REQUIRING CERTAIN RECYCLING FACILITIES TO OBTAIN CERTAIN PERMIT; MODIFYING MANIFEST REQUIREMENTS; REQUIRING CERTAIN PERSONS TO MAKE APPLICATIONS FOR PERMIT; PROVIDING FOR STAYS OF CERTAIN TIME RESTRAINTS FOR PERMITS FOR CONTROLLED INDUSTRIAL WASTE; REQUIRING CERTAIN APPLICATION INFORMATION FOR SOLID WASTE PERMITS; REQUIRING INDIVIDUAL ON-SITE OBSERVATIONS; EXEMPTING CERTAIN FACILITIES FROM CERTAIN PERMITS; MAKING CERTAIN NOTICE AND OPPORTUNITY FOR HEARINGS TO BE DEEMED TO COMPLY WITH SOLID WASTE MANAGEMENT ACT; REQUIRING CLOSURE, MAINTENANCE AND MONITORING PLANS; PROVIDING POSTING OF CERTAIN AMOUNTS; PROVIDING CONDITIONS AND CRITERIA; PROHIBITING CERTAIN SITE SIZE; DEFINING TERM; PROVIDING FOR STAYS FOR CERTAIN TIME RESTRAINTS IN PERMITS FOR SOLID WASTE DISPOSAL FACILITIES; AMENDING SECTION 3, CHAPTER 176, O.S.L.1989 (68 O.S.SUPP.1989, SECTION 53003), WHICH RELATES TO THE OKLAHOMA WASTE TIRE RECYCLING ACT; MODIFYING PERSONS REQUIRED TO PAY ASSESSMENTS; PROVIDING FOR CODIFICATION; PROVIDING AN OPERATIVE DATE; AND DECLARING AN EMERGENCY.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 63 O.S.1981, Section 1-2002, as last amended by Section 1, Chapter 54, O.S.L.1988 (63 O.S.Supp.1989, Section 1-2002), is amended to read as follows:

Section 1-2002. As used in this act, unless the context otherwise requires:

1. "Controlled industrial waste" is defined as waste materials and byproducts, either solid or liquid, which are to be discarded by the generator, or recycled and which are toxic to human, animal, aquatic or plant life and which are generated in such quantity that they cannot be safely disposed of in properly operated, state-approved sanitary land fills, waste or sewage treatment facilities. Controlled industrial waste may include but is not limited to explosives, flammable liquids, spent acids, caustic solutions, poisons, containerized gases, sludge, tank bottoms containing heavy metallic ions, toxic organic chemicals, infectious materials, and materials such as paper, metal, cloth or wood which are contaminated with controlled industrial waste, and excludes domestic sewage;

2. "Disposal" means the final disposition of controlled industrial waste;

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2. "Department" means the State Department of Health;
4. "Disposal site" means the location where any final disposition of controlled industrial waste occurs. Disposal sites include but are not limited to injection wells and surface disposal sites;
5. "Division" means the Controlled Industrial Waste Management Division;
6. "Person" means any individual, corporation, industry, firm, partnership, association, venture, trust, institution, federal, state or local governmental instrumentality, agency or body or any other legal entity however organized;
7. "Treatment" means the detoxification, neutralization, incineration or biodegradation of controlled industrial waste in order to remove or reduce its harmful properties or characteristics;
8. "Treatment facility" means any location where treating or recycling of controlled industrial waste occurs, ~~but does not include a facility engaged only in recycling;~~
9. "Recycling" means the reuse, processing, treating, neutralizing or re-refining of materials and by products which, if discarded, would be controlled industrial waste into a product of which is being reused or which has been used for beneficial use. Controlled industrial waste which is intended for fuel is not deemed to be recycled until it is actually burned;
10. ~~"Recyclable materials" means those materials and by products which if discarded would be controlled industrial waste;~~
11. "Storage facility" means any location where the temporary holding of controlled industrial waste or recyclable material occurs, including any tank, pit, lagoon, pond, or other specific place or area;
12. 11. "Controlled industrial waste facility" as used herein shall mean and include storage and treatment facilities and disposal sites;
13. 12. "Board" means the State Board of Health;
14. 13. "Council" means the Controlled Industrial Waste Management Council;
15. 14. "Site" or "proposed site" means the surface area of a disposal site, or other controlled industrial waste facility, as applied for in the application for a permit for the facility;
16. 15. "On-site treatment, storage or disposal" means the treatment, storage or disposal at a controlled industrial waste facility of controlled industrial waste generated by the owner of the facility;
17. 16. "Off-site treatment, storage or disposal" means the treatment, storage or disposal at a controlled industrial waste facility of controlled industrial waste not generated by the owner of the facility; and
18. 17. "Multi-user on-site treatment facility" means a treatment facility for controlled industrial waste generated by the co-owners of the facility and which meets the criteria specified by Section 2 of this act 1-2008.1 of this title.

SECTION 2. AMENDATORY 63 O.S.1981, Section 1-2004, as amended by Section 1, Chapter 180, O.S.L.1986 (63 O.S.Supp.1989, Section 1-2004), is amended to read as follows:

Section 1-2004. The Department shall have the following powers and duties:

1. Issue permits for the construction and operation of controlled industrial waste facilities;

2. Provide the owner or operator of a controlled industrial waste facility a list of all materials which the Department deems acceptable for treatment, recycling, storage, and disposal at the facility;
3. Make periodic inspections of controlled industrial waste facilities and recycling, transporting, and generating facilities to determine the extent of compliance with the Department's rules and regulations and the Oklahoma Controlled Industrial Waste Disposal Act;
4. Develop, maintain, and monitor public records of the source and amount of controlled industrial waste ~~and recyclable materials~~ generated in Oklahoma and the methods used to dispose of, recycle, or treat said waste or material;
5. Require and prescribe manifest forms to all persons generating and transporting controlled industrial waste ~~or recyclable materials~~ offsite for storage, recycling, treatment, or disposal;
6. Require and approve or disapprove disposal plans from all persons generating controlled industrial waste or shipping controlled industrial waste within, from, or into Oklahoma indicating the amount of controlled industrial waste generated, the handling, storage, treatment, and disposal methods, and the controlled industrial waste facilities used. The disposal plans shall be kept current by the persons generating or shipping controlled industrial waste and the Department shall be advised within five (5) working days of any changes in the disposal plans. ~~The disposal plans shall be required for controlled industrial wastes which are to be treated or disposed. Persons storing or shipping recyclable materials in an environmentally acceptable manner for the purpose of recycling shall be required to file disposal plans only for those wastes which are to be disposed;~~
7. Require reports from all persons generating controlled industrial waste, ~~or recyclable materials~~, indicating the amount generated, the treatment and disposal methods, and the treatment, disposal, and recycling sites used. Such reports are to be made on at least a quarterly basis;
8. Require periodic reports or manifest certifications regarding such programs and efforts to reduce the volume or quantity and toxicity of such controlled industrial waste as may be required by or pursuant to authority of the Oklahoma Controlled Industrial Waste Disposal Act;
9. Require reports from all operators of controlled industrial waste facilities who receive controlled industrial waste for treatment or storage or disposal, listing the amount, transporter, and generator of all controlled industrial waste received. Such reports are to be made on at least a monthly basis;
10. Approve or disapprove methods of disposal of controlled industrial waste, and may prohibit certain specific disposal practices including, but not limited to, any type of land disposal of any form of such waste. Land disposal includes, but is not limited to, landfills, surface impoundments, waste piles, deep injection wells, land treatment facilities, salt dome and bed formations and underground mines or caves;
11. Inform persons generating controlled industrial waste of available, alternative methods of disposal of such waste and assist the persons in developing satisfactory disposal plans;
12. Develop a system to provide information on recyclable materials wastes to potential users of such materials. Such information shall not include any information which the Department deems confidential or private in nature;
13. Cooperate and share information with the U.S. Environmental Protection Agency;

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14. Prepare an emergency response plan for spills of controlled industrial waste and for spills of hazardous materials;
15. Make information obtained by the Department regarding controlled industrial waste facilities and sites available to the public in substantially the same manner, and to the same degree, as would be the case if the controlled industrial waste program in this state were being carried out by the U.S. Environmental Protection Agency;
16. With respect to any existing surface impoundment or class of surface impoundments or landfills from which the Department determines controlled industrial waste is likely to migrate into groundwater, impose such requirements, including double liners, as may be necessary to protect human health and the environment;
17. Prohibit or restrict the use of any specific disposal methods or practices for specific controlled industrial waste material, substances or classes, as may be necessary to protect human health and the environment;
18. Identify areas within the state which are unsuitable for specific controlled industrial waste disposal methods, and deny permits for such disposal methods in such areas;
19. Issue a one-year research development and demonstration permit for any treatment facility which proposes an innovative and experimental controlled industrial waste treatment technology or process not yet regulated. Permits may be renewed no more than three times. No renewal may exceed one (1) year;
20. Waive or modify general permit application and issuance requirements for research and development permits, except for financial responsibility and public participation requirements;
21. Terminate experimental activity if necessary to protect human health and the environment;
22. Require oil recycling facilities using controlled industrial waste to have a controlled industrial waste facility permit;
23. Issue permits containing any conditions necessary to protect human health and the environment;
24. Issue permits for the storage of controlled industrial waste in underground tanks;
25. Require groundwater monitoring for any landfill, surface impoundment, land treatment site or pile;
26. Determine and enforce penalties for violations of the Oklahoma Controlled Industrial Waste Disposal Act;
27. Evaluate the benefit of rules and regulations governing labeling practices for any containers used for the disposal, storage, or transportation of controlled industrial waste which accurately identify such waste, and govern the use of appropriate containers for such waste not otherwise regulated by the federal government. A report containing the evaluation of the benefit for rules and regulations governing such labeling practices shall be submitted by April 30, 1987, to the Speaker of the House of Representatives and the President Pro Tempore of the Senate;
28. Monitor research and development regarding methods of the handling, storage, use, processing, and disposal of controlled industrial waste;
29. Cooperate with existing technical reference centers on controlled industrial waste disposal, recycling practices, and related information for public and private use;
30. Monitor research in the technical and managerial aspects of management and use of controlled industrial waste and recycling and recovery of resources from controlled industrial wastes;

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31. Determine existing rates of production of controlled industrial waste;
32. Promote recycling and recovery of resources from controlled industrial wastes;

33. Encourage the reduction or exchange, or both, of controlled industrial waste; and

34. Cooperate with an existing information clearinghouse, to develop records of recyclable waste. Every generator of controlled industrial waste shall supply the Department with information for the clearinghouse. Each generator shall not be required to supply any more information than is required by the manifests. The Department shall make this information available to persons who desire to recycle the wastes. The information shall be made available in such a way that the trade secrets of the producer are protected.

SECTION 3. AMENDATORY 63 O.S.1981, Section 1-2009.1, as amended by Section 6 of Enrolled House Bill No. 1933 of the 2nd Session of the 42nd Oklahoma Legislature, is amended to read as follows:

Section 1-2009.1 A. Except as otherwise provided by subsection B of this section or any rules of the State Board of Health with respect to short-term storage, no person shall store, treat or dispose of controlled industrial waste ~~or store recyclable materials~~ or commence construction of or own or operate any premises or facility engaged in the operation of storing, treating or disposing of controlled industrial waste or storing recyclable materials, who does not possess a valid and appropriate controlled industrial waste facility permit.

B. 1. Any person who owned or operated a controlled industrial waste facility which was operating or under construction on November 19, 1980, and who has submitted notice and permit application to the U.S. Environmental Protection Agency or to the Department, and whose facility complies with the rules of the Board, may continue operation until such time as the permit application is determined.

2. The State Board of Health may by rule provide for continued operation on an interim basis pending permit determination of a facility in existence on the effective date of any statutory or regulatory amendments that would subject the facility to a permit requirement pursuant to the Oklahoma Controlled Industrial Waste Disposal Act.

C. Facilities engaged only in recycling which are not required to be permitted pursuant to the provisions of Section 6 of this act shall conduct operation of the facility ~~operate~~ in an environmentally acceptable manner and in accordance with the rules and regulations regarding the manifest, transportation and treatment, storage requirements and disposal standards, and generators in the event a controlled industrial waste is generated therefrom.

Note: 63 O.S.Supp.1990, § 1-2009.1 was previously amended by Chapter 196, H.B.No. 1933, § 6.

SECTION 4. AMENDATORY 63 O.S.1981, Section 1-2010, is amended to read as follows:

Section 1-2010. Persons generating controlled industrial waste ~~or recyclable materials~~ shall provide the operator of any mode of any offsite transportation carrying controlled industrial waste ~~or recyclable materials~~ a manifest in a form which has been prescribed by the Department, indicating a disposal plan number assigned by the Department which shows that the Department has approved the plans of the person generating said waste ~~or material as provided in paragraph 8 of Section 4 of this act~~. The manifest shall also set forth the type, amount, approximate content, origin and destination of the waste ~~or material~~. The operator shall have the manifest in his possession

while carrying or handling the controlled industrial waste ~~or recyclable material~~ and shall release the manifest to such person as is duly authorized to receive said waste ~~or material~~ at the time of delivery. Provided that no person ~~other than a recycler~~ shall accept the manifest unless such manifest has a properly assigned disposal plan number indicating that the Department has approved the plans of the person generating controlled industrial waste. Provided, further, that no person shall transport, receive, treat or dispose of controlled industrial waste ~~or recyclable material~~ without having the manifest in his possession.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-2012.4 of Title 63, unless there is created a duplication in numbering, reads as follows:

The filing of a proceeding appealing the issuance of a permit issued prior to or after the effective date of this act authorizing the construction or operation of a controlled industrial waste facility shall stay any time restraints specified in the permit relating to the term or expiration of the permit.

SECTION 6.¹ NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-2014.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

Facilities that recycle controlled industrial wastes are exempt from construction permit requirements specified by the provisions of the Oklahoma Controlled Industrial Waste Disposal Act for those units exclusively used in the recycling process. Controlled industrial waste recycling facilities are subject to the requirements specified by the Oklahoma Controlled Industrial Waste Disposal Act for an operations permit, and shall also meet design standards as promulgated by the State Board of Health. Recycling facilities which are in existence on the effective date of this act may but shall not be required to file an operations permit application pursuant to the provisions of the Oklahoma Controlled Industrial Waste Disposal Act. A permit modification is not required for a permitted recycling facility to use new, improved, or better methods of recycling if the Department has approved the plans as being environmentally acceptable.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-2414.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. In considering applications for solid waste disposal site permits which were originally filed with the State Department of Health prior to April 30, 1990, the Department shall require applicants to submit information based on an individual on-site observation for determining the highest seasonal phreatic groundwater table. The original notice and opportunity to request a public meeting regarding such applications shall be deemed to comply with the Solid Waste Management Act for any submittals by the same applicant for the same site.

B. For all land disposal site permits, the Department shall require the submission of plans for phased posting of security for proper final closure, maintenance, and monitoring of solid waste disposal sites. The Department shall only require posting of an amount sufficient to cover the estimated final closure costs for the projected operation of a site during any one (1) year of its life, plus the eight-year post-closure maintenance and monitoring period. At no time during the life of a site shall any portion of the site which has not achieved final closure be larger than the portion utilized during the previous one (1) year. The term "final closure" shall mean those measures for providing final capping material, proper drainage, perennial vegetative cover,

1. Editorially renumbered as § 1-2014.2 of title 63 to avoid duplication in numbering.

maintenance, and monitoring required for the site by regulations of the State Board of Health.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-2414.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

The filing of a proceeding appealing the issuance of a permit issued prior to or after the effective date of this act authorizing the construction and operation of a solid waste disposal facility shall stay any time restraints specified in the permit relating to the term or expiration of the permit.

SECTION 9. AMENDATORY Section 3, Chapter 176, O.S.L.1989 (68 O.S.Supp.1989, Section 53003), is amended to read as follows:

Section 53003. A. At the time any new tire for use on automobiles or on light trucks with a laden weight of ten thousand (10,000) pounds or less is sold by a wholesale or retail dealer not for resale, there shall be assessed a waste tire recycling fee of One Dollar (\$1.00) per tire unless the purchaser in such sale is a political subdivision or any agency, public trust, or instrumentality thereof.

B. The wholesaler or retailer shall remit such fee to the Oklahoma Tax Commission in the same manner as provided by Section 1365 of Title 68 of the Oklahoma Statutes. At the time of filing any report as required by the Oklahoma Tax Commission, the wholesaler or retail dealer shall remit therewith to the Tax Commission, except as otherwise provided by this section, ninety-seven and one-half percent (97½%) of the fee due pursuant to this section. Failure to remit such fee at the time of filing the returns shall cause said fee to become delinquent. If said fee becomes delinquent the wholesaler or retail dealer forfeits his claim to the discount authorized by this section and shall remit to the Tax Commission one hundred percent (100%) of the amount of the fee due plus any penalty due.

C. For the purpose of this section, "new tire" means an originally manufactured tire and shall not include any remanufactured, recapped or otherwise restored tire.

D. The provisions of this section shall expire on December 31, 1999.

SECTION 10.² This act shall become operative July 1, 1990.

SECTION 11. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Approved May 30, 1990.

INSURANCE—AGE-BASED REDUCTION IN PREMIUM CHARGES—VOIDABLE TRANSFERS—FRAUDULENT TRANSFERS—UNINSURED MOTORIST COVERAGE

CHAPTER 297

H.B. No. 2052

AN ACT RELATING TO INSURANCE; AMENDING SECTION 1, CHAPTER 122, O.S.L.1985 (36 O.S.SUPP.1989, SECTION 924.1), WHICH RELATES TO REDUCTION IN PREMIUM CHARGES FOR CERTAIN PERSONS; REMOVING AGE

2. 63 O.S.Supp.1990, § 1-2002 Note.

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